IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

Crl.Rev.Pet.No. 2893 of 2007()

CRA.800/2006 of VI ADDL.SESSIONS COURT, ERNAKULAM
CC.500/2001 of JUDL.MAGISTRATE OF FIRST CLASS, PERUMBAVOOR

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REVN. PETITIONER: PETITIONER/APPELLANT - ACCUSED

JAMES JOHN, AGED 58 YEARS,
S/O.YOHANNAN, MANJUMMELKUDIYIL VEEDU,
KOTTAPPADY, KOTHAMANGALAM.

BY ADV. SMT.T.D.RAJALAKSHMI
SRI.E.R.VENKATESWARAN

RESPONDENTS: RESPONDENT - COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
SUB INSPECTOR OF POLICE, KURUPPAMPADY,
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 02/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. No. 2893 of 2007

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Dated, this the 2nd day of August 2007

ORDER

The revision petitioner was the sole accused in C.C. 500 of 2001 on the file of the Judl. First Class Magistrate Court, Perumbavoor. He challenges the conviction entered and the sentence passed against him under Sections 324, 323 and 447 I.P.C. The case of the prosecution can be summarised as follows:-

On 6-10-2000 at about 3 p.m. the accused out of his previous enmity towards P.W1, the de facto complainant criminally trespassed into the compound of J.R. Traders and attacked P.W.1 with an iron rod causing injuries on his forehead and stamped him causing an anterior dislocation on his shoulder. The accused has thereby committed offences punishable under Sections 447, 324 and 323 I.P.C.

2. On the accused pleading not guilty to the charge framed against him by the trial court the prosecution examined eight witnesses as P.Ws 1 to 8 and got marked 5 documents as Exts.P1 to P5 and one material object as MO1.

3. After the close of the prosecution evidence, the accused

was questioned under Section 313 (1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence.

4. On being called upon to enter on his defence, he did not adduce any evidence except getting marked the copy of judgment in C.C. 520 of 1995 as Ext. D1 and copy of order sheet as Ext.D2.

4. The learned Magistrate, after trial, as per judgment dated 13-9-2006 acquitted the accused of the offence punishable under Section 326 I.P.C. but found him guilty of offences punishable under Sections 447, 324 and 323 I.P.C. For the conviction under Section 324 I.P.C. he was sentenced to simple imprisonment for one year and to pay fine of Rs. 1,000/- and on default to pay the fine, suffer simple imprisonment for one month. For the conviction under Section 323 I.P.C. he was sentenced to simple imprisonment for three months and for the conviction under Section 447 I.P.C. he was sentenced to simple imprisonment for 15 days . There was a direction to pay a sum of Rs. 500/- from out of the fine amount to P.W.1 by way of compensation under Section 357 (1) Cr.P.C. The substantive sentences of imprisonment were directed to run concurrently. Aggrieved by the judgment of the trial court the revision petitioner

preferred an appeal before the VI Addl. Sessions court, Ernakulam as Crl. Appeal No. 800 of 2006. The lower appellate court confirmed the conviction but modified the sentence by reducing imprisonment from 1 year to three months under Section 324 I.P.C. and from three months to one month under Section 323 I.P.C. In all other respects, trial courts sentence was confirmed. It is the said judgments which are assailed in this revision.

5. After hearing both sides and after perusing the records, I am not satisfied that the revision petitioner has made out a ground for dislodging the conviction recorded against him. The trial court which had the unique advantage of seeing the witnesses and assessing their credibility has chosen to believe the prosecution witnesses. The lower appellate court has also not found any infirmity on the part of the trial court in the appreciation of evidence. Accordingly, the conviction recorded against the revision petitioner is confirmed.

6. What now survives for consideration is the question as to whether the sentence imposed on the revision petitioner is adequate or not having regard to the facts and circumstances of the case. Considering the injuries sustained and the manner of inflicting injuries and also considering the civil disputes between the parties, I am of the view that penal servitude by way of incarceration is not warranted

and that interests of justice will be adequately met by directing the revision petitioner to undergo imprisonment till the rising of court and to pay an appropriate amount by way of compensation to P.W.1 the injured. Accordingly, the sentence imposed on the revision petitioner is set aside and he is directed to undergo imprisonment till rising of court for each of the aforementioned offences. For the conviction under Section 324 I.P.C. he shall also pay a sum of Rs.5,000/- by way of compensation to P.W.1 the injured under Section 357 (3) Cr.P.C. within one month from today failing which he shall suffer simple imprisonment for three months.

This Revision is disposed of as above.

V. RAMKUMAR,
(JUDGE)

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